IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID LANE JOHNSON,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION *et al.*,

Defendants.

Case No. 17-cv-5131

MEMORANDUM OF LAW IN SUPPORT OF THE NFL DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Defendants National Football League ("NFL") and National Football League Management Council ("NFLMC," collectively with the NFL, the "NFL Defendants") hereby move to dismiss all claims asserted against the NFL Defendants in Plaintiff's First Amended Complaint. (Dkt. No. 39.) Following this Court's October 3, 2018 Opinion & Order (the "Order," Dkt. No. 125), the claims against the NFL Defendants—to wit, breach of contract under the Labor Management Relations Act ("LMRA") (Count Seven) and a claim for declaratory relief (Count Eleven)—cannot go forward. Indeed, Plaintiff himself acknowledges that the claims against the NFL Defendants cannot survive, given the Court's Order. (*See* Dkt. No. 126 at 3 ("[W]hile Johnson disagrees with the Court's ruling denying his Motion to Vacate and dismissing his duty of fair representation claims and declaratory judgment claim against the NFLPA, Johnson understands the impact the Court's ruling as to these claims has on his breach of contract claim and any remaining declaratory judgment claim against the NFL Defendants.")) Because the claims against the NFL Defendants fail as a

matter of law, the NFL Defendants respectfully request this Court to dismiss all claims asserted against the NFL Defendants and dismiss the NFL Defendants from this action.

BACKGROUND[1]

Plaintiff David Lane Johnson commenced the present action in the United States District Court for the Northern District of Ohio in January 2017, petitioning the court to vacate an arbitration award that confirmed his suspension after he tested positive for a performance-enhancing substance. (Dkt. No. 1.) In addition, Plaintiff alleged, *inter alia*, that the NFL Defendants breached a collective bargaining agreement in violation of Section 301 of the LMRA and that the union representing him, the National Football League Players' Association ("NFLPA"), breached the duty of fair representation that is implied from the National Labor Relations Act. (*Id.*) Plaintiff also asserted a claim for declaratory relief. (*Id.*) The NFL Defendants and the NFLPA moved to dismiss Plaintiff's claims and also moved to transfer venue. (Dkt. Nos. 16, 22, 26.) In July 2017, the NFL Defendants' and the NFLPA's motions to transfer venue were granted, and the case was transferred to the Southern District of New York. (Dkt. No. 68.)

Upon transfer to this Court, the parties met for an initial conference on August 24, 2017. At the conference, the Court set a briefing schedule for Plaintiff's motion to vacate the arbitral award, as well as the NFLPA's motion to dismiss. (Dkt. No. 98.) The Court also ordered the NFL Defendants to answer Plaintiff's First Amended Complaint (*id.*), which the NFL Defendants filed on September 8, 2017 (Dkt. No. 103). On October 3, 2018, this Court issued its Order denying

[1] The NFL Defendants incorporate the factual background laid out in detail in the Court's October 3, 2018 Order. (*See* Dkt. No. 125.) On a Rule 12(c) motion, courts may consider any items of which the court can take judicial notice, including a court's prior orders. *See Brodeur v. N.Y.C.*, No. 04-CV-1859 (JG), 2005 WL 1139908, at *2-3 (E.D.N.Y. May 13, 2005).

Plaintiff's motion to vacate the arbitral award and granting the NFLPA's motion to dismiss Plaintiff's breach of duty of fair representation asserted against it. (Dkt. No. 125.) The Court also ordered the parties to submit a joint letter by October 18, 2018 regarding proposed next steps with respect to Plaintiff's claims against the NFL Defendants. (*Id.*) In the joint letter submitted on October 18, 2018, the NFL Defendants informed the Court of its intent to move to dismiss the claims asserted against them. (Dkt. No. 126.) The NFL Defendants hereby submit the foregoing in accordance with the Court's October 23, 2018 scheduling order. (Dkt. No. 131.)

STANDARD

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, "[a]fter the pleadings are closed . . . a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c).[2] In deciding motions under Rule 12(c), "courts employ the same standard applicable to dismissals pursuant to Rule 12(b)(6)." *Overseas Priv. Inv. Corp. v. Furman*, No. 10 Civ. 7096 (RJS), 2012 WL 967458, at *6 n.7 (S.D.N.Y. Mar. 14, 2012) (Sullivan, J.). Thus, to survive a Rule 12(c) motion, a complaint must "provide the grounds upon which [the] claim rests." *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007); *see also* Fed R. Civ. P. 8(a)(2) ("A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief . . . ."). To meet this standard, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). If a plaintiff has not "nudged" his claims "across the line from conceivable to plausible," the claims must be dismissed. *Twombly*, 550 U.S. at 570.

[2] Although the NFLPA has not answered Plaintiff's First Amended Complaint, the NFL Defendants' motion to dismiss pursuant to Rule 12(c) is nevertheless appropriate. *See Gilman v. Spitzer*, 902 F. Supp. 2d 389, 394 n.3 (S.D.N.Y. 2012) (finding that under Rule 12(c), "the 'pleadings are closed' in the relevant sense when the *pertinent* pleadings are closed" and that "[i]n any event, the result here would be the same if the Court treated Defendants' motion as a Rule 12(b)(6) motion or converted the motion to a Rule 56 motion" (emphasis in original)).

ARGUMENT

Given this Court's Order, both claims asserted against the NFL Defendants—a claim for breach of contract under Section 301 of the LMRA and a claim for declaratory relief—fail as a matter of law and must be dismissed.

1. *Section 301 of LMRA*

As this Court noted, Plaintiff brought a "hybrid § 301/fair representation claim" against the NFL Defendants and the NFLPA, respectively. (Dkt. No. 125 at 9.) In such "hybrid" claims, the claim against the employer alleges breach of the collective bargaining agreement, and the claim against the union alleges breach of the union's duty of fair representation. (*Id.*) "To establish a hybrid § 301/[duty of fair representation] claim, a plaintiff must prove *both* (1) that the employer breached a collective bargaining agreement and (2) that the union breached its duty of fair representation vis-a-vis the union members." *White v. White Rose Food*, 237 F.3d 174, 178-79 (2d Cir. 2001) (emphasis added); *see also Acosta v. Potter*, 410 F. Supp. 2d, 298, 309 (S.D.N.Y. 2006) (noting that a breach of duty of fair representation claim against a union is a prerequisite to a claim against an employer for breach of a collective bargaining agreement). In other words, "courts presented with hybrid claims need not reach the question of whether the employer violated the CBA, unless the union has [breached the duty of fair representation]." *Castro v. 32BJ Union*, 800 F. Supp. 2d 586, 593-94 (S.D.N.Y. 2011).

In this case, the Court found conclusively that the NFLPA did *not* breach the duty of fair representation by acting arbitrarily, in bad faith, or discriminatorily. (Dkt. No. 125 at 16.) Because the Court dismissed the breach of duty of fair representation claim that Plaintiff asserted against the NFLPA, Plaintiff has no claim against the NFL Defendants for breach of collective bargaining

agreement as a matter of law. (Dkt. No. 125 at 9 ("Significantly, a union's breach of the duty of fair representation is a prerequisite to consideration of the merits of [a] plaintiff's claim against an employer for breach of a collective bargaining agreement."(Citations omitted).) *See also White*, 237 F.3d at 183 ("[P]laintiffs' failure to establish their DFR claim against the union means that their hybrid § 301/DFR claim against [the employer] necessarily fails as well."). Count Seven therefore must be dismissed.

2. *Declaratory Relief*

A party seeking declaratory relief from a district court bears the burden of proving the existence of an actual case or controversy. *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 95 (1993); 28 U.S.C. § 2201(a). Because Plaintiff's breach of contract claim against the NFL Defendants fails as a matter of law, so too does his claim for declaratory relief. (*See* Dkt. No. 125 (dismissing Plaintiff's duty of fair representation claims, as well as Plaintiff's claim for declaratory relief).) *See also Piven v. Wolf Haldenstein Adler Freeman & Herz L.L.P.*, No. 08 Civ. 10578 (RJS), 2010 WL 1257326, at *11 (Sullivan, J.) (dismissing claim for declaratory relief as "duplicative of [plaintiffs'] other claims and therefore unnecessary"). Thus, Count Eleven must also be dismissed against the NFL Defendants.

CONCLUSION

For the reasons set forth above, Plaintiff's claims against the NFL Defendants fail as a matter of law. Accordingly, the NFL Defendants respectfully request this Court to dismiss Counts Seven and Eleven with prejudice, and dismiss the NFL Defendants from this case.

Dated: November 2, 2018
New York, NY

/s/ Estela Díaz

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